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Petition of Sally Reed for Letters of Administration

IN THE

PROBATE COURT

OF THE COUNTY OF ADA

STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF

RICHARD LYNN REED, Deceased.

The petition of Sally Reed respectfully represents and shows unto the Court:

I.

Richard Lynn Reed, the above named decedent, died intestate at Boise, in the County of Ada, State of Idaho, on the 29th day of March, 1967, and that time was a resident of Boise, in the County of Ada, State of Idaho.

II.

The said decedent left an estate in said County of Ada, State of Idaho, consisting of personal property.

III.

The value and character of the property of the estate so left by said decedent, so far as the same are known to your petitioner or can be by her ascertained, are as follows:

Educational savings fund in Idahy (sic) Federal Credit Union, value $495.00, plus interest.

Clarinet, value approximately $100.00 Personal clothing and effects, value approximately $50.00, Records, value approximately $100.00

IV.

The estate and effects for which letters of administration are hereby applied do not exceed in value the sum of $1000.00.

V.

The only heirs at law of said decedent known to your petitioner are as follows, to-wit:

NAME	AGE	RELATIONSHIP	RESIDENCE
Cecil R. Reed	over 21	Adopted Father	5207 Ponder
Sally Reed	over 21	Adopted Mother and Legal Guardian	1622 Vista Avenue Boise, Idaho

VI.

That due search and inquiry have been made to ascertain whether or not the decedent left a will. That no will has been Found and according to the best knowledge of your petitioner said decedent left no will or testament.

VII.

That your petitioner is over the age of majority, a citizen of the United States of America and a resident of the County of Ada, State of Idaho; that your petitioner is a person interested in said estate, the mother and legal guardian of the person and estate of Richard Lynn Reed, and a person in all respects competent to act as administratrix of the estate, and is entitled to letters of administration upon said estate.

WHEREFORE, Your petitioner prays that a day may be appointed for hearing this petitioner's petition and that due notice of said hearing be given as required by law; that upon hearing and the proofs to be adduced thereat, the administration of said estate be granted to your petitioner and letters of administration thereupon be issued to her.

ROBERT F. MCLAUGHLIN
Attorney for the Petitioner
Residence and Post Office Address
Mountain Home, Idaho

(Jurat omitted in printing)

Petition of Cecil R. Reed for Letters of Administration

IN THE

PROBATE COURT

OF ADA COUNTY

STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF
RICHARD LYNN REED, Deceased.

To the Honorable W. E. Smith, Judge of the Probate Court of the County of Ada, State of Idaho:

The Petition of Cecil R. Reed, of said Ada County, Respectfully shows:

That Richard Lynn Reed died on or about the 29th day of March, 1967, County of Ada, State of Idaho.

That said deceased, at the time of his death, was resident of the County of Ada, State of Idaho.

That said deceased left estate in the said County of Ada, State of Idaho, consisting of personal property, the same being his separate property and not to exceed $1,000.00 in value.

That the names, ages, and residences of the heirs of said deceased are as follows:

Cecil R. Reed, father adult
5705 Plnder Ave. Boise, Idaho
Sally Reed, mother adult
1622 Vista Ave. Boise, Idaho

That due search and inquiry have been made to ascertain if said deceased left any will and testament but none has been found and according to the best knowledge, information and belief of your petitioner, said deceased died intestate;

That your petitioner, Cecil R. Reed, is the father of said deceased, and therefore as your petitioner is advised and believes he is entitled to letters of administration of said estate.

WHEREFORE, Your petitioner prays that a day of Court may be appointed for hearing this application; that due notice thereof be given by the Clerk of said Court, by posting notices according to law; and upon said hearing, and the proofs to be adduced, letters of administration of said estate may be issued to your petitioner.

Dated: November 27, 1967.

CECIL R. REED
Applicant

CHARLES S. STOUT
Attorney for Applicant
Residing at Boise, Idaho

Filed Nov. 27, 1967

Opinion of Probate Judge

PROBATE COURT

COUNTY OF CANYON, STATE OF IDAHO

CALDWELL, IDAHO

March 6, 1968

Mr. Charles S. Stout
Idaho Building
Boise, Idaho

Re: Estate of Richard Lynn Reed, Deceased.

Dear Sir:

The Application of Sally Reed, mother of the decedent and the application of Cecil R. Reed, father of the decedent, for Letters of Administration were heard jointly on February 21, 1968, and the Court took the same under advisement.

Under 15-312, Idaho Code, the mother and father would have equal priority to Letters of Administration. However, Section 15-314, Idaho Code, reads as follows:

> "Preferences,—Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood."

The Court believes proper interpretation of the statutes requires the granting of Letters of Administration to Cecil R. Reed.

It did not appear that either party is disqualified to act as administrator.

The interests of Sally Reed can be protected by requesting notice of proceedings, objections to the inventory, by petition for distributive share, and by other procedural devices almost as fully as if she were appointed administratrix.

Will counsel for Cecil R. Reed please prepare an Order Appointing Administrator fixing bond at $1,000.00.

Very truly yours,

Floyd C. McClintick
Probate Judge

LCM:RR
cc: Robert F. McLaughlin
Ada County Probate Court

Order Appointing Administrator

IN THE

PROBATE COURT

OF ADA COUNTY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF

RICHARD LYNN REED,

Deceased.

The petitions of Sally Reed, the mother of deceased, and Cecil R. Reed, the father of deceased, praying for letters of administration of the estate of Richard Lynn Reed, deceased, coming on regularly to be heard the 21st day of February, 1968 and due proof having been made to the satisfaction of this Court that the Clerk had given notice in all respects according to law; and all and singular the law and the evidence by the Court understood and fully considered whereupon it is by the Court here adjudged and decreed that the said Richard Lynn Reed died on the 29th day of March, 1967, intestate, in the County of Ada, State of Idaho; a resident of said County of Ada, State of Idaho, at the time of his death; and that he left estate in the County of Ada, State of Idaho, and within the jurisdiction of this Court.

It further appearing to the Court that each of said applicants is qualified to act but that the said Cecil R. Reed has a preference by reason of Section 15-314 of the Idaho Code.

IT IS ORDERED, That letters of administration of the estate of the said Richard Lynn Reed, deceased, issue to the said petitioner, Cecil R. Reed, upon his taking the oath and filing a bond, according to law, in the sum of $1,000.00.

Dated March 11, 1968.

FLOYD C. MCCLINTICK
Probate Judge of Ada County Protem

Notice of Appeal Filed April 24, 1968

IN THE

PROBATE COURT

OF THE COUNTY OF ADA, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF

RICHARD LYNN REED,

Deceased.

To the Honorable W. E. Smith, Probate Judge of Ada County, and to the Honorable Lloyd C. McClintick, Probate Judge of Ada County, Protem:

COMES NOW Sally Reed, an heir-at-law of Richard Lynn Reed, deceased, and herewith gives notice of appeal from the verdict, judgment and order appointing administrator, and the whole thereof, rendered by the Court in this matter on the 11th day of March, 1968, denying the petition of Sally Reed for letters of administration of the estate of Richard Lynn Reed, deceased.

The grounds for said appeal are as follows:

1. The Court erred on both questions of law and of fact in not granting letters of administration of the estate of Richard Lynn Reed, deceased, to Sally Reed, an heir of the deceased.

Said heir and appellant appeals on questions of law and of fact therein and demands trial de novo in the District Court.

Dated this 23rd day of April, 1968.

ROBERT F. MCLAUGHLIN
Attorney for Sally Reed
Residence and Post Office Address
Mountain Home, Idaho

Opinion of the District Court, Fourth Judicial District

IN THE

DISTRICT COURT

OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF ADA

Civil No. 40834

MEMORANDUM DECISION AND ORDER

In the Matter of the Estate of

RICHARD LYNN REED, Deceased.

This matter is before the Court on appeal from the Probate Court of Ada County Idaho. The point in question is whether I.C. 15-314 is constitutional. This act provides that in the appointment of persons to administer an estate of a decedent, that of several persons claiming and equally entitled to administer that males must be preferred to females. The parties through their respective counsel have stipulated that the matter be submitted to the Court on briefs and the same have been submitted.

This section of the Probate Code originally appeared in the Probate Practice Act adopted by the first territorial legislature and has been in effect ever snce. It was apparently borrowed from California. Montana has a similar statute. The constitutionality has never been questioned in any of these states. A companion statute, I.C. 15-312,

which gives a preference to brothers over sisters has been upheld in each of the states although the precise point which is involved in this case was not raised or argued.

The appellants contend that under the Idaho Civil Rights Act this section is unconstitutional. The Idaho Civil Rights Act, however, applies only to the right to obtain and hold employment and the right to an equal enjoyment of accommodation or public place of amusement, etc. The right to be appointed as administrator is not employment, it is merely a temporary appointment for a temporary purpose. For definition of the word administrator, see WORDS AND PHRASES, Volume Two, Page 291, Section 339. This Court, therefore, does not feel that this section is in conflict with the Civil Rights Law.

The appellant further contends that the statute is unconstitutional since it violates the Fourteenth Amendment to the Constitution of the United States and Article I, Section One of the Constitution of the State of Idaho. First it should be noted that women are not disqualified from being appointed to administer an estate in Idaho since Section 15-314 states that of several persons claiming and *equally* entitled to administer, males must be preferred to females. The Fourteenth Amendment protects all persons without regard to race, color or class and prohibits any state legislation which has the effect of denying to any race, class or individual the equal protection of the laws. The guiding principle of this guarantee of equal protection of the laws requires that all persons be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities imposed. The equal protection clause of the Fourteenth Amendment is a restriction on state governments and includes all departments of state government including both political and judicial. It is true

that a state may classify persons and objects for the purpose of legislation and pass laws applicable only to persons or objects within a designated class. However, class legislation discriminating against some and favoring others is prohibited by the equal protection guarantee. One of the essential requirements as to classification so that it does not violate the constitutional guarantee as to equal protection of laws is that the classification must not be capricious or arbitrary but must be reasonable and natural and must have a rational basis. If it is arbitrary or capricious it is in conflict with the guarantee. The Court can see no reasonable basis for the classification which gives preference of males over females. Counsel for the respondent argues that there is a reasonable base for the classification. He says that men ordinarily have more business experience than women. The Court feels that this statement has no basis in fact in this modern age and society. There are occasions when a woman would be more qualified than a man and vice versa. This would be the basis of the Court choosing one over the other where they are both equally entitled to be appointed to administer the estate. Counsel for the respondent further claims that it would be easier to recover from a man than a woman in the case of defalcation. This again depends on the facts of whether or not the woman is married and whether or not she has separate property. Again these matters are something the Court should weigh in determining which of two persons is best qualified to administer the estate. The mere fact that a person is a male rather than a female is not a valid basis for preference and the Court, therefore, finds this section of the Idaho Code, 15-314, unconstitutional as a violation of the Fourteenth Amendment to the United

States Constitution and Article I, Section One of the Constitution of the State of Idaho.

Originally the appeal was from both questions of law and fact. The parties have stipulated that the appeal is only to questions of law. Therefore, the matter should be returned to the Probate Court for its determination of which of the two parties is best qualified to serve as administrator or administratrix of the estate. It is so Ordered.

Dated and signed this 2nd day of December, 1968.

CHARLES R. DONALDSON
District Judge

Notice of Appeal Filed January 30, 1969

IN THE

DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF ADA

No. 30834

In the Matter of the Estate of

RICHARD LYNN REED,

Deceased.

To Sally Reed and to Derr, Derr and Walters and Robert F. McLaughlin, her attorneys, and to the above entitled Court:

You and each of you will please take notice that Cecil R. Reed, Administrator of the Estate of Richard Lynn Reed, deceased, does hereby appeal to the Supreme Court of the State of Idaho from that certain order and judgment made and entered in the above entitled cause by the above entitled court on the 2nd day of December, 1968, reversing and setting aside the order of the Probate Court of Ada County, Idaho, appointing said Cecil R. Reed, administrator of the estate of Richard Lynn Reed, deceased and ordering the said matter returned to said Probate Court for further proceedings and from the whole thereof.

Dated January 30, 1969.

CHARLES S. STOUT
Attorney for Appellant
Residing at Boise, Idaho

Opinion of the Supreme Court of the State of Idaho

IN THE

SUPREME COURT OF THE STATE OF IDAHO

No. 10417

Boise, November 1969 Term

Filed: Feb 11 1970

Martin V. Huff, Clerk

SALLY M. REED,

Plaintiff-Respondent;

v.

CECIL R. REED, ADMINISTRATOR In the Matter of the Estate of Richard Lynn Reed, Deceased,

Defendant-Appellant.

Appeal from the District Court of the Fourth Judicial District, Ada County. Hon. Charles R. Donaldson, District Judge.

Appeal from order and judgment of district court reversing order of probate court appointing administrator. Order and judgment of district court *reversed.*

Charles S. Stout, Boise, for appellant.

Derr, Derr & Walters, Boise, and Robert F. McLaughlin, Mountain Home, for respondent.

McFADDEN, C.J.

Richard Lynn Reed, the adopted son of Sally M. Reed and Cecil R. Reed, died intestate on March 29, 1967, in Ada County. According to the respective petitions of his mother Sally M. Reed, and of his father, Cecil R. Reed, his parents were his only heirs at law.

Sally M. Reed, the respondent herein, as the decedent's mother, filed her petition for probate of his estate on November 6, 1967. Prior to the time set for the hearing on this petition, Cecil R. Reed, the father, also petitioned for letters of administration.

The Ada County probate judge deemed himself disqualified to act and the cause was heard before another probate judge, pursuant to stipulation. The cause was heard on the petitions for administration of the respective parties, and the probate court entered its order appointing appellant Reed (the father). The probate court in entering its order noted that each of the parties was equally entitled to letters of administration under I.C. § 15-312, but that Mr. Reed, the appellant, was entitled to a preference by reason of I.C. § 15-314, which provides that as between persons equally entitled to administer an estate, males must be preferred to females.

On April 23, 1968 the respondent (the mother) appealed to the district court contending that I.C. § 15-314 is unconstitutional as a violation of the Idaho Civil Rights Act (I.C. § 18-7301 et seq.), the Fourteenth Amendment of the United States Constitution and Art. 1, § 1 of the Idaho Constitution. The district court reversed the order of the probate court on the ground that I.C. § 15-314 violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and returned the case to the

probate court for a determination, disregarding the preference set out by I.C. § 15-314, of who is entitled to the letters of administration. The appellant has appealed to this court contending that the district court erred in holding I.C. § 15-314 unconstitutional.

I.C. § 15-312 provides that

> "Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:
>
> 1. The surviving husband or wife or some competent person whom he or she may request to have appointed.
>
> 2. The children.
>
> 3. The father or mother. * * *"

This section is followed by I.C. § 15-314 which provides that

> "Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood."

Since, then, under I.C. § 15-312 a father and mother are "equally entitled" to letters of administration, the father has a preference by virtue of I.C. § 15-314.

This court has said before that the priorities established by I.C. § 15-312 are mandatory, leaving no room for discretion by the court in the appointment of administrators. Vaught v. Struble, 63 Idaho 352, 120 P.2d 259 (1941). Similarly the preference given males by I.C. § 15-314 is also mandatory; the statute itself says that males *must* be preferred to females. Other courts construing similar

provisions have also held that the preference is mandatory. In re Coan's Estate, 64 P. 691 (Cal. 1901).

The respondent, however, contends that I.C. § 15-314 violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution because the discrimination against females as a class is not based upon any rational policy, but rather is arbitrary and capricious. She contends that there is no justifiable basis for granting males a preference merely on the basis of sex.

It is well settled that the equal protection clause of the Fourteenth Amendment does not preclude the legislature from making classifications and drawing distinctions between classes. It merely prohibits classifications which are arbitrary and capricious. Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956); Morey v. Doud, 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344 (1957); McLaughlin v. Florida, 379 U.S. 184, 13 L.Ed. 2d 222, 85 S.Ct. 283 (1964). It is for the courts to determine in each instance whether a particular classification rests upon rational grounds or is in fact without justification and arbitrary. Carrington v. Rash, 380 U.S. 89, 13 L.Ed. 2d 675, 85 S.Ct. 775 (1965); McLaughlin v. Florida, supra.

It is equally well settled that legislative enactments are entitled to a presumption of validity and that a classification will not be held unconstitutional absent a clear showing that it is arbitrary and without justification. Rowe v. City of Pocatello, 70 Idaho 343, 218 P.2d 695 (1950).

I.C. § 15-312 classifies individuals as to their relationship to a decedent and gives to those most closely related to the decedent a preference for appointment as administrator. This classification is basically in accord with the law as to the intestate succession of property in Idaho.

I.C. § 14-103. Those first entitled to succeed to the property have a priority over subsequent successors insofar as entitlement to administer is concerned. This is a basic and rational classification insofar as I.C. § 15-312 is concerned. However, unlike determination of succession of property where a court may award to individuals in a class a proportionate share of property without complication, the naming of an administrator out of a particular class becomes more involved. Generally only one administrator is named, although by joint petition it is possible for joint administrators to be named from a particular class.

When two or more persons of a class, as established by I.C. § 15-312, individually seek administration of an estate, the court is faced with the issue of which one should be named. By I.C. § 15-314, the legislature eliminated two areas of controversy, *i.e.*, if both a man and a woman of the same class seek letters of administration, the male would be entitled over the female, the same as a relative of the whole blood is entitled over a relative of the same class but of only the half blood. This provision of the statute is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits as to which of the two or more petitioning relatives should be appointed.

Philosophically it can be argued with some degree of logic that the provisions of I.C. § 15-314 do discriminate against women on the basis of sex. However nature itself has established the distinction and this statute is not designed to discriminate, but is only designed to alleviate the problem of holding hearings by the court to determine eligibility to administer. This is one of those areas where a choice must be made, and the legislature by enacting I.C. § 15-314 made the determination.

The legislature when it enacted this statute evidently concluded that in general men are better qualified to act as an administrator than are women. As the United States Supreme Court pointed out in Morey v. Doud, supra,

> "'A classification having some reasonable basis does not offend against that clause [equal protection clause] merely because it is not made with mathematical nicety or because in practice it results in some inequality. * * * One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369." 77 S.Ct. at 1349.

While this classification may not be entirely accurate, and there are doubtless particular instances in which it is incorrect, we are not prepared to say that it is so completely without a basis in fact as to be irrational and arbitrary. We are concerned only with whether the classification is so irrational and arbitrary that it violates the constitution, and it is our opinion that it is not.

States have recognized the validity of classifications based upon sex in a variety of situations. See 2 Stan. L. Rev. 691. This court has held that a woman cannot bind her separate property by signing an appeal bond when it is not for her own use and benefit. See Craig v. Lane, 60 Idaho 178, 89 P.2d 1008 (1939). There are also several other cases from other jurisdictions upholding statutes discriminating on the basis of sex when there is a rational basis for distinguishing between the sexes. See State v. Hunter, 300 P.2d 455 (Ore. 1956); Patterson v. City of Dallas, 355 S.W.2d 838 (Tex. Civ. App. 1962); State v.

Hollman, 102 S.E.2d 873 (S.C. 1958); Eskridge v. Division of Alcoholic Beverage Control, 105 A.2d 6 (N.J. Super. 1954); State v. Emery, 31 S.E.2d 858 (N.C. 1944); In re Mahaffay's Estate, 254 P. 875 (Mont. 1927).

As this court stated in Newland v. Child, 73 Idaho 530, 254 P.2d 1066 (1953),

> "It is recognized that the legislature has broad discretionary power to make classifications of persons and property for all purposes which it may lawfully seek to accomplish. So long as the classifications are based upon some legitimate ground of difference between the persons or objects classified, are not unreasonable or arbitrary, and bear a reasonable relation to the legislative purpose, such classifications do not violate the constitution." 73 Idaho at 539-540.

It is our opinion that the state has a legitimate interest in promoting the prompt administration of estates and that the statute in question promotes this interest by curtailing litigation over the appointment of administrators. In addition it is supported by the presumption of constitutionality.

The respondent also contends that I.C. § 15-314 violates the newly enacted Idaho Civil Rights Act. I.C. § 18-7301 et seq. That act, however, provides a remedy for, among other things, sexual discrimination in employment or public accommodations. It is our opinion that it is inapplicable here. Moreover, the legislature could not have intended by that enactment to prohibit all discrimination based on sex. As in the case with the equal protection clause of the Fourteenth Amendment, discrimination based upon the differences between men and women which is not wholly irra-

tional or arbitrary and which is utilized to accomplish a legitimate objective is not condemned.

The judgment of the district court is reversed and the order of the probate court awarding letters of administration to the appellant is reinstated. Costs to appellant.

McQuade, Shepard and Spear, JJ., and Felton, D.J., concur.

Notice of Appeal to the Supreme Court of the United States

IN THE

SUPREME COURT
OF THE STATE OF IDAHO

No. 10417

SALLY M. REED,

Plaintiff-Respondent,

v.

CECIL R. REED, Administrator in the Matter of the Estate of Richard Lynn Reed, Deceased,

Defendant-Appellant.

Notice is hereby given that Sally M. Reed, Plaintiff-Respondent above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Idaho, reversing the judgment of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and declaring Idaho Code 15-314 constitutional, entered in this action on February 11, 1970. Petition for rehearing was denied on March 24, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

ALLEN R. DERR
Counsel for Plaintiff-Respondent

June 16, 1970